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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 938.

W. E. VALLIANT & CO., INC.,
Petitioner (Appellant below),

against

RAYONIER, INC.,
Respondent (Appellee below).

BRIEF IN OPPOSITION TO PETITION

GEORGE W. P. WHIP,
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SUBJECT INDEX.

Summary of Points.

		PAGE
I.	Petitioner failed to prove that the navigation of the vessel by the mate did not contribute to the collision	2
II.	The doctrine of the Pennsylvania, 19 Wall. 125, 136 was properly applied	2
III.	Denial of limitation was in conformity with the decisions of the Supreme Court	4
IV.	Petitioner has stated no reason for the granting of certiorari	5

Table of Cases.

Albert Dumois, The, 177 U. S. 240, 20 S. Ct. 595, 44 L. Ed. 751 3

Belden v. Chase, 150 U. S. 674, 14 S. Ct. 264, 37 L. Ed. 1218 3

Capitol Transportation Co. v. Cambria Steel Co., 249 U. S. 334, 63 L. Ed. 631, 39 S. Ct. 292 4

Cullen Fuel Co., Inc. v. W. E. Hedger, Inc., 290 U. S. 82, 78 L. Ed. 189, 54 S. Ct. 10 4

Denali, The, 105 F.(2) 413, 112 F.(2) 952, (C. C. A. 9th) Cert. Den. 61 S. Ct. 65, 311 U. S. 687, 85 L. Ed. 444 ..... 3, 4, 5

Dempsey v. Md. T. Co., 279 F. 94 (C. C. A. 4th) 4

Eagle Wing, The, 135 F. 826 (D. C. E. D. Va.) aff. 162 F. 882 3

Leathem Smith-Putnam Navigation Co. v. National Union Fire Insurance Co., 1937 A. M. C. 925 (D. C. E. D. Wis.) 3

PAGE

Luckenbach v. W. J. McCahan Sugar Ref. Co., 248 U. S. 139, 63 L. Ed. 170, 39 S. Ct. 53 4

Martello, The, v. Willey, The, 153 U. S. 64, 14 S. Ct. 723, 38 L. Ed. 637 3

New York Marine, The, No. 10, 109 F.(2) 564 (C. C. A. 2nd) 3, 4, 5

Pendleton v. Benner Line, 246 U. S. 353, 62 L. Ed. 770, 38 S. Ct. 330 4

Pennsylvania, The, 19 Wall. 125, 136 ..... 2, 3

People's Coal Co., The, v. Second Pool Coal Co., 181 F. 609 aff. (C. C. A. 3rd) 188 F. 892 3

Richardson v. Harmon, 222 U. S. 96, 56 L. Ed. 110, 32 S. Ct. 27 4

Richelieu Navigation Co. v. Boston Ins. Co., 136 U. S. 408, 10 S. Ct. 934, 34 L. Ed. 398 3

State of Maryland v. Standard Oil Co., 8 F.(2) 514 (D. C. Md.) 3

STATUTES.

46 U. S. C. A. Secs. 222, 362, 375 and 405 3

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BRIEF IN OPPOSITION TO PETITION

This brief is filed in opposition to a petition for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit which affirmed the decision of the United States District Court for the District of Maryland. The District Court's opinion is reported in *50 F. Supp., 746.* The opinion of the Circuit Court of Appeals will be found in *140 F(2) 589 (Advance Sheets).*

I.

In its first point in its brief, Petitioner asserts that there was no evidentiary support for refusing limitation and it falls back upon its former argument that the acts of Webster, the mate, had nothing whatsoever to do with the collision which argument both the Circuit Court of Appeals and the District Court rejected. Among other things, the District Court held that the negligence of the HALL's master in proceeding without the required personnel of which Petitioner had privity and knowledge was one of the proximate causes of the collision (R. 76, 77). The Circuit Court of Appeals held that Petitioner's contention that the navigation of the vessel by the mate did not contribute to the accident could not be sustained and that Petitioner who had privity and knowledge of the violation of the HALL's certificate had not carried the burden of overcoming the presumption that the violation was at least a contributing cause of the loss (R. 86, 87).

Petitioner not only had privity and knowledge that the HALL sailed with only one licensed pilot or officer in violation of her certificate but Petitioner actually instructed the HALL's master to proceed without the required pilot (R. 28-30).

II.

In its second point Petitioner complains that the Circuit Court of Appeals wrongly applied the doctrine of *The Pennsylvania, 19 Wall, 125, 136* as to the burden of proof.

The Circuit Court of Appeals held that Petitioner's contention that the navigation of the vessel by the mate did not contribute to the accident could not be sustained (R. 86). It would seem, therefore, that as Petitioner actually instructed the master of the HALL to proceed without the

required licensed pilot, limitation should be denied without the assistance of the doctrine of *The Pennsylvania.* However, in the matter of collision, stranding and similar situations it is clear that the decision in *The Pennsylvania* applies to a violation of a vessel's certificate as well as to a violation of supervising inspectors' rules and regulations now referred to as United States Coast Guard General Rules and Regulations as set forth in *Sections 222, 362, 375 and 405 of Volume 46 U. S. C. A.* and *Paragraph 96.37 on Page 1-63 of Cargo Owner's Exhibit No. 5. Paragraph 96.37 on Page 1-63 of Cargo Owner's Exhibit No. 5* provides that the navigation of every steamer above 150 gross tons shall be under the control of a first class pilot.

See:

The Martello v. The Willey, 153 U. S. 64, 14 S. Ct. 723, 38 L. Ed. 637.

The Albert Dumois, 177 U. S. 240, 254, 20 S. Ct. 595, 44 L. Ed. 751.

The Denali, 105 F(2) 413; 112 F(2) 952 (C. C. A. 9th) Cert. Den. 61 S. Ct. 65, 311 U. S. 687, 85 L. Ed. 444.

The New York Marine No. 10, 109 F(2) 564 (C. C. A. 2nd).

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The People's Coal Co. v. Second Pool Coal Co., 181 F. 609 aff. (C. C. A. 3rd) 188 F. 892.

III.

In its third point, Petitioner contends that in affirming the District Court's decision in respect to the denial of limitation, the Circuit Court of Appeals went contrary to the decisions of this Court.

We submit that the Circuit Court of Appeals' decision was strictly in conformity with the decisions of this Court. By instructing Captain Jarrett of the HALL to proceed without the required pilot or licensed officer, Petitioner took an active and personal part in the violation in distinction from merely having privity and knowledge of it. Those decisions of this Court which hold that there can be no limitation in respect to personal contracts, therefore, should control. But in any event, this Court and the lower courts have consistently held that an owner always remains liable without the right of limitation for his own fault or neglect.

See:

Cullen Fuel Co., Inc., v. W. E. Hedger, Inc., 290 U. S. 82, 78 L. Ed. 189, 54 S. Ct. 10.

Luckenbach v. W. J. McCahan Sugar Ref. Co., 248 U. S. 139, 63 L. Ed. 170, 39 S. Ct. 53.

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Dempsey v. Md. T. Co., 279 F. 94 (C. C. A. 4th).

IV.

The Circuit Court of Appeals' decision does not unsettle the law. Neither does it leave the shipping industry in doubt as to its rights and obligations as Petitioner states in its fourth point. It is in conformity with the decisions of this Court and Petitioner has failed to cite a conflicting decision from one of the other Circuits. There is no doubt but that it conforms to the Second Circuit's rather recent decision in *The New York Marine No. 10, supra,* and to *The Denali, supra,* a recent decision of the Ninth Circuit.

We submit that Petitioner has stated no reason for the granting of certiorari and that its Petition should be denied.

Respectfully submitted,

GEORGE W. P. WHIP,
Counsel for Respondent.